

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

2017 FEB -9 PM 3:47

CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.

DOROTHY A. BROWN CLERK

ALEJANDRO REYES, individually, and)
on behalf of all others similarly situated,)

Plaintiff,)

v.)

SUMMIT TOOL COMPANY, and)
KEN-TOOL COMPANY,)

Defendants.)

No. 2017CH02025
CALENDAR/ROOM 08
TIME 00:00
Class Action

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff ALEJANDRO REYES (“Plaintiff” or “Mr. Reyes”), individually, and on behalf of all others similarly situated, by and through counsel at Zimmerman Law Offices, P.C., brings this Class Action Complaint (“Complaint”) against Defendants SUMMIT TOOL COMPANY (“Summit Tool”) and KEN-TOOL COMPANY (“Ken-Tool”) (collectively “Defendants”), as follows:

INTRODUCTION

1. Plaintiff brings this suit on behalf of himself and a Class of similarly situated individuals to stop Defendants from misrepresenting that their tire irons are longer than advertised.

2. In addition, Plaintiff, on behalf of himself and the proposed Class, seeks restitution and other equitable, injunctive, declaratory, and monetary relief as set forth below.

3. Defendants manufacture, market, distribute, and sell tire irons but misrepresent and falsely advertise that these tire irons are longer than they are.

4. By providing a shorter tire iron than advertised, Defendants deprive consumers of torque that grows in strength in direct proportion to the length of the tire iron.¹ Additionally, Plaintiff and the Class paid for more steel than they received.

5. By misrepresenting the length of their products, Defendants engaged, and still engage, in business practices that are unlawful, unfair, and deceptive because consumers reasonably rely on Defendants' material misrepresentations to their detriment.

PARTIES

6. Plaintiff ALEJANDRO REYES is a natural person and resident and citizen of Illinois.

7. Defendant KEN-TOOL COMPANY does business nationwide, including in Cook County and throughout the state of Illinois. It is unclear where—or if—Ken-Tool is incorporated.²

¹ Torque is a measure of how much a force acting on an object causes that object to rotate. See, e.g., <https://www.physics.uoguelph.ca/tutorials/torque/Q.torque.intro.html>: (“Imagine pushing a door to open it. The force of your push (F) causes the door to rotate about its hinges (the pivot point, O). How hard you need to push depends on the distance you are from the hinges (r) . . . The closer you are to the hinges (i.e. the smaller r is), the harder it is to push. . .”).

² Defendant Summit Tool’s website (<http://summittoolcompany.com>) states that it is a division of “Ken-Tool Company.” Summit Tool’s website also suggests that the company operates under the name “Summit Tool and Forging”. However, neither Ken-Tool Company nor Summit Tool and Forging appear to be registered corporate entities in Ohio. The Ohio Secretary of State’s website reflects that Summit Tool Company is the only one of these entities that is registered and also shows that it has the same address as Ken-Tool Company as reflected on the Ken-Tool Company website. That latter website, <http://www.kentool.com>, has a link to the Summit Tool Company website using the name “Summit Tool & Forging.” The Ken-Tool Company website claims that Ken-Tool Company is the manufacturer of “Ken-Tool” tire irons, the subject matter of this lawsuit. It is unclear whether Summit Tool Company is doing business as “Ken-Tool Company” and that its product brand is called “Ken-Tool.”

8. Defendant SUMMIT TOOL COMPANY, is an Ohio corporation with its principle place of business in Akron, Ohio, that does business nationwide, including in Cook County and throughout the state of Illinois.

JURISDICTION AND VENUE

9. Jurisdiction over Defendants is proper pursuant to 735 ILCS 5/2-209(b)(4) because Defendants are non-resident companies doing business in the state of Illinois. Defendants' tire irons are sold at stores throughout Illinois.³

10. Venue is proper in this County, pursuant to 735 ILCS 5/2-102, because Defendants are doing business in Cook County, Illinois.

FACTUAL ALLEGATIONS

***Consumer Expectations Regarding Products
Advertised as Being a Certain Length***

11. Consumers reasonably rely on Defendants' representations that their tire irons are a certain length to consumers' detriment—as a result, consumers are receiving less than they are paying for. Additionally, the products do not work as represented because they require more torque to do the job. *See* footnote 1, *supra*.

Defendants' Deceptive and Unfair Business Practices

12. At all relevant times, Defendants were responsible for the manufacturing, packaging, labeling, promotion, distribution, and sale of the tire irons throughout the nation, including in the state of Illinois.

³ Through the "Ken-Tool" website (<http://kentool.com>), Defendants allow for customers to locate nearby stores in which Defendants' "Ken-Tool" products are sold. *See* <http://www.kentool.com> (last visited February 7, 2017). A search on that website for locations at which to buy Ken-Tool products within 100 miles of Chicago, Illinois postal zip code 60602 yielded 21 locations in Illinois, and also yielded 870 locations nationwide.

13. On their websites and in their advertisements, Defendants misrepresent the length of their tire irons. For example, Defendants represents that their model T45HD truck tire iron is 41 inches long.⁴ However, in fact, the tire iron is substantially shorter than 41 inches long, as it measures 39 ½ inches in length.

14. As noted above, by providing a shorter tire iron than advertised, Defendants deprive consumers of torque that grows in strength in direct proportion to the length of the tire iron, thereby making the tire iron less useful. Additionally, Plaintiff and the Class paid for more steel than they actually received.

15. Defendants willfully misrepresented that their tire irons are a certain length, knowing that consumers, including Plaintiff and Class members, would reasonably rely on Defendants' representations as to the length of the tire irons.

16. The length of the tire iron has a material bearing on consumers' decision to buy that product.

17. Therefore, Defendants' labeling and advertising is false and misleading.

18. Accordingly, Plaintiff and members of the Class have been harmed because they overpaid for the products and would not have purchased the products had they known that the products were not as long as Defendants represented them to be.

Facts Relevant to Plaintiff

19. Plaintiff purchased Defendants' model T45HD truck tire iron in Cook County on February 18, 2016. This is not the only tire iron that Plaintiff purchased from Defendants.

⁴ See, e.g. <http://kentool.com/index.php/resources/tool-merchandisers> (last visited February 7, 2017) (stating that model T45HD truck tire irons are 41" in length); Ken Tool Catalog, page 17 (same).

20. Before deciding to purchase the tire iron, Plaintiff viewed and relied upon Defendants' representations that the subject tire iron was 41 inches long.

21. Because Plaintiff was purchasing a product that was labeled and advertised as being 41 inches long, he reasonably believed that it, in fact, was that long.

22. It was reasonable for Plaintiff to rely on Defendants' representations that the tire iron was 41 inches long in deciding to purchase it. Plaintiff could not have known that the product was not 41 inches long prior to purchasing it.

23. Had Plaintiff known that the tire iron was less than 41 inches long, he would not have purchased the product, or he would have paid substantially less for it. As a result, Plaintiff has suffered damages, including the amount of money he paid to purchase the tire iron.

24. In addition to monetary damages, Plaintiff seeks injunctive relief to stop Defendants from engaging in unlawful, unfair, and deceptive business practices by misrepresenting that their tire irons are a certain length when they are not.

CLASS ALLEGATIONS

25. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801, on behalf of a nationwide class of similarly situated individuals and entities ("the Class"), defined as follows:

All persons and entities in the United States who purchased a Ken-Tool tire iron that was shorter in length than advertised.

Excluded from the Class are: (1) Defendants, Defendants' agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

26. Plaintiff also brings this action pursuant to 735 ILCS 5/2-801, on behalf of a subclass of similarly situated individuals and entities (“the Illinois Subclass”), defined as follows:

All persons and entities in Illinois who purchased a Ken-Tool tire iron that was shorter in length than advertised.

Excluded from the Illinois Subclass are: (1) Defendants, Defendants’ agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Illinois Subclass; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

27. **Numerosity:** The Class is so numerous that joinder of individual members would be impracticable. Defendants’ tire irons are sold nationwide at over 850 stores across the country.⁵ While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiff believes that there are thousands of Class members, if not more.

28. **Commonality and Predominance:** There are several questions of law and fact common to the claims of the Plaintiff and members of the putative Class, which predominate over any individual issues, including:

- a. Whether Defendants’ tire irons are shorter than advertised;
- b. Whether Defendants misrepresented to the Plaintiff and the Class that the tire irons are longer than they actually are;
- c. Whether Defendants failed to inform Plaintiff and the Class of the actual length of their tire irons;

⁵ Defendants’ tire irons are sold in over 20 stores in the state of Illinois alone. *See supra* note 3.

- d. Whether Defendants' conduct constitutes unfair or deceptive business practices under the Illinois Consumer Fraud and Deceptive Trade Practices Act;
- e. Whether Defendants violated the Consumer Fraud and Deceptive Trade Practices Acts of the fifty states and the District of Columbia;
- f. Whether Defendants' conduct constitutes fraud;
- g. Whether Defendants' conduct constitutes fraudulent misrepresentation;
- h. Whether Defendants' conduct resulted in Defendants unjustly retaining a benefit to the detriment of Plaintiff and Class members, and violated the fundamental principles of justice, equity, and good conscience.

29. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues, to wit: Defendants' misrepresentations and omissions concerning the length of their tire irons.

30. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests antagonistic to those of the proposed Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

31. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. Individual actions are not economically feasible. The trial and the litigation of Plaintiff's claims are manageable.

32. Unless a class is certified, Defendants will retain monies received as a result of their conduct that was wrongfully taken from Plaintiff and Class members. Unless an injunction

is issued, Defendants will continue to commit the violations alleged, and the members of the proposed Class and the general public will continue to be misled.

33. Defendants have acted and refused to act on grounds generally applicable to the proposed Class, making appropriate final injunctive relief with respect to the proposed Class as a whole.

COUNT I
(on Behalf of the Illinois Subclass)
Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS 505/1, *et seq.*)

34. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-33 with the same force and effect as though fully set forth herein.

35. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

36. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS 505/2.

37. The ICFA applies to Defendants’ acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

38. Each Defendant is a “person,” as defined by 815 ILCS 505/1(c).

39. Plaintiff and each member of the Class are “consumers,” as defined by 815 ILCS 505/1(e), because they purchased Defendants’ tire irons.

40. Defendants’ tire irons are “merchandise,” as defined by 815 ILCS 505/1(b).

41. Defendants made, and still make, false and fraudulent statements, and misrepresented material facts, regarding their products sold to consumers, including the misrepresentation that the tire irons are longer than they actually are.

42. Defendants omitted, and still omit, material facts regarding their products sold to consumers, including the actual length of the tire irons.

43. Defendants' misrepresentations and omissions regarding their tire irons constitute deceptive and unfair acts or practices prohibited by the ICFA.

44. Defendants' misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

45. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of tire irons to Plaintiff and the Class.

46. Defendants' aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.

47. Defendants intended, and still intend, that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing Defendants' tire irons.

48. Plaintiff and Class members reasonably relied on Defendants' misrepresentations and omissions when they purchased Defendants' tire irons.

49. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding Defendants' tire irons, they would have declined to purchase them, or they would have paid less for them.

50. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the tire irons which, in fact, were not as long as represented, and the requirement that they must use more torque when using the tire irons.

51. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing Defendants' tire irons because it was reasonable for Plaintiff and Class members to rely on Defendants' misrepresentations and omissions, and they could not have known the actual length of the tire irons prior to purchasing them.

52. The injury suffered by consumers as a result of Defendants' unfair and deceptive trade practices is substantial because consumers unknowingly paid for tire irons that were not as long as represented.

53. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing Defendants' tire irons because they would not have purchased them, or they would have paid substantially less for them, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ALEJANDRO REYES, individually, and on behalf of the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Illinois Subclass and against Defendants;

- D. Enjoining Defendants from making false representations and omissions concerning their tire irons that will be sold to customers;
- E. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff and the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

(on Behalf of the Nationwide Class)

**Violation of the Consumer Fraud and Deceptive Trade
Practices Acts of the Various States and District of Columbia**

54. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-33 with the same force and effect as though fully set forth herein.

55. Plaintiff brings this Count individually, and on behalf of all similarly situated residents of each of the 50 states and the District of Columbia for violations of the respective statutory consumer protection laws, as follows:

- a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8-19-1, *et seq.*;
- b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471, *et seq.*;
- c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, *et seq.*;
- d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101, *et seq.*;
- e. the California Unfair Competition Law, Bus. & Prof. Code §§17200, *et seq.* and 17500 *et seq.*;
- f. the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*;
- g. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- h. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et seq.*;

- i. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, *et seq.*;
- j. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901, *et seq.*;
- k. the Florida Deceptive and Unfair Trade Practices Act, FSA § 501.201, *et seq.*;
- l. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- m. the Hawaii Unfair Competition Law, H.R.S. § 480-1, *et seq.*;
- n. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;
- o. the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*;
- p. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- q. The Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1, *et seq.*;
- r. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- s. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- t. the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- u. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- v. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;
- w. the Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A, *et seq.*;
- x. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- y. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*;
- z. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- aa. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;

- bb. the Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- cc. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- dd. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- ee. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- ff. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- gg. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;
- hh. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- ii. the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- jj. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- kk. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- ll. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;
- mm. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- nn. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- oo. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;
- pp. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- qq. the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-1, *et seq.*;
- rr. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- ss. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41, *et seq.*;
- tt. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;

- uu. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- vv. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196, *et seq.*;
- ww. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- xx. the West Virginia Consumer Credit And Protection Act, W.Va.Code § 46A-1-101, *et seq.*;
- yy. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- zz. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

56. Defendants' tire iron products are consumer goods.

57. Defendants engaged, and still engage, in unfair and deceptive acts or practices when Defendants misrepresented and continue to misrepresent material facts regarding their products sold to consumers, including the misrepresentation that the tire irons are longer than they actually are.

58. Defendants omitted, and still omit, material facts regarding their products sold to consumers, including the actual length of the tire irons.

59. Defendants' misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

60. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of their tire irons to Plaintiff and Class members.

61. Defendants' aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.

62. Defendants intended, and still intend, that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing Defendants' tire irons.

63. Plaintiff and Class members reasonably relied on Defendants' misrepresentations and omissions when they purchased Defendants' tire irons.

64. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding Defendants' tire irons, they would have declined to purchase them, or they would have paid less for them.

65. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the tire irons, which were not as long as represented, and the requirement that they must use more torque when using the tire irons.

66. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing Defendants' tire irons that were significantly mislabeled because it was reasonable for Plaintiff and Class members to rely on Defendants' misrepresentations and omissions, and they could not have known the actual length of the tire irons prior to purchasing them.

67. The injury suffered by consumers as a result of Defendants' unfair and deceptive trade practices is substantial because consumers unknowingly paid for tire irons that are not as long as represented.

68. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing Defendants' tire irons because they would not have purchased them, or they would have paid substantially less for

them, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ALEJANDRO REYES, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendants;
- D. Enjoining Defendants from making false representations and omissions concerning their tire irons that will be sold to customers;
- E. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III

(on Behalf of the Nationwide Class and the Illinois Subclass) Common Law Fraud

69. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-33 with the same force and effect as though fully set forth herein.

70. The elements of a cause of action for fraud are: "(1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and

(5) plaintiff's damages resulting from reliance on the statement." *See, e.g., Connick v. Suzuki Motor Co.*, 174 Ill.2d 482, 496 (1996) (citing *Bd. of Educ. of City of Chicago v. A, C & S, Inc.*, 131 Ill.2d 428, 452 (1989)).

71. Defendants made, and still make, false statements of material fact through their advertising for their tire irons. Defendants misrepresented, and continue to misrepresent, the actual length of the tire irons and misrepresent that the tire irons are longer than they actually are.

72. The fact that the tire irons are not as long as Defendants represent is a material fact that Defendants have falsely represented and/or actively concealed.

73. Defendants knew that their tire irons were not as long as Defendants represented at the time that they made the representations. Defendants' misrepresentations were made with scienter.

74. Defendants affirmatively misrepresented and actively concealed material facts regarding their tire irons with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase them.

75. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the tire irons, or they had would have paid less for them.

76. It was reasonable for Plaintiff and the Class to rely on Defendants' misrepresentations and omissions and believe that the tire irons were as long as represented when they purchased the product. Plaintiff and Class members could not have known the actual length of the tire irons prior to purchasing them.

77. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the tire irons which were not as long as represented, and the requirement that they must use more torque when using the tire irons.

78. As a direct and proximate result of Defendants' fraud, Plaintiff and members of the Class suffered damages by purchasing Defendants' tire irons because they would not have purchased them, or they would have paid substantially less for them, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ALEJANDRO REYES, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IV
(on Behalf of the Nationwide Class and the Illinois Subclass)
Fraudulent Misrepresentation

79. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-33 with the same force and effect as though fully set forth herein.

80. To succeed on a claim of fraudulent misrepresentation, a plaintiff “must establish the following elements: (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance.” *See, e.g., Doe v. Dilling*, 228 Ill.2d 324, 342-43 (2008) (internal citations omitted).

81. Defendants made, and still make, false statements of material fact through their advertising for the tire irons. Defendants misrepresented, and continue to misrepresent the actual length of the tire irons and misrepresent that the tire irons are longer than they actually are.

82. The fact that the tire irons are not as long as Defendants represent is a material fact that Defendants have falsely represented and/or actively concealed.

83. Defendants knew that their tire irons were not as long as they represented at the time that they made the representations. Defendants’ misrepresentations were made with scienter.

84. Defendants affirmatively misrepresented and actively concealed material facts regarding the tire irons with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase them.

85. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the tire irons, or they would have paid less for them.

86. It was reasonable for Plaintiff and the Class to rely on Defendants' misrepresentations and omissions and believe that the tire irons were as long as represented when they purchased the product. Plaintiff and Class members could not have known the actual length of the tire irons prior to purchasing them.

87. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the tire irons which were not as long as represented, and the requirement that they must use more torque when using the tire irons.

88. As a direct and proximate result of Defendants' fraudulent representations, Plaintiff and members of the Class suffered damages by purchasing Defendants' tire irons because they would not have purchased them, or they would have paid substantially less for them, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ALEJANDRO REYES, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;

- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT V

**(on Behalf of the Nationwide Class and the Illinois Subclass)
Unjust Enrichment**

89. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-33 with the same force and effect as though fully set forth herein.

90. When a specific contract does not govern the relationship of the parties, and, therefore, no adequate remedy at law is applicable, an equitable remedy under a theory of unjust enrichment is available. *See, e.g., Guinn v. Hoskins Chevrolet*, 361 Ill.App.3d 575, 604 (1st Dist. 2005) (internal citations omitted).

91. Unjust enrichment “is a condition that may be brought about by unlawful or improper conduct as defined by law[.]” *See, e.g., Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (quoting *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill.App.3d 1017, 1024 (3rd Dist. 2009); *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill.App.3d 483, 492 (1st Dist. 1995)).

92. To prevail on a claim of unjust enrichment, a plaintiff must prove: (1) “that the defendant has unjustly retained a benefit to the plaintiff’s detriment,” and (2) “that defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good conscience.” *See, e.g., Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir.2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 160 (1989)).

93. Plaintiff and members of the Class paid a retail price for Defendants' tire irons believing that they were as long as represented. However, the tire irons purchased by Plaintiff and members of the Class were not as long as represented.

94. Defendants have unjustly received and retained a benefit at the expense of Plaintiff and the Class because Defendants unlawfully acquired their profits for the tire irons appreciating and knowing that the tire irons purchased by Plaintiff and members of the Class were not as long as represented.

95. Defendants have acquired and retained money belonging to Plaintiff and the Class as a result of their wrongful conduct: misrepresenting that the tire irons are longer than they actually are, and concealing the actual length of the tire irons. Each individual sale of a tire iron nets Defendants a profit at the expense of consumers.

96. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and would not have purchased the tire irons, or would have paid less for them, had they been aware of the truth, and they received a product that was worth less than what they paid.

97. Plaintiff and the members of the Class have suffered damages as a direct result of Defendants' conduct.

98. Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience because Defendants misled Plaintiff and the Class into falsely believing the tire irons are longer than they actually are in order to unjustly receive and retain a benefit.

99. Under the principles of equity, Defendants should not be allowed to keep the money belonging to Plaintiff and the members of the Class because Defendants have unjustly received it as a result of Defendants' unlawful actions described herein.

100. Plaintiff, individually and on behalf of the Class, seeks restitution for Defendants' unlawful conduct, as well as interest and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ALEJANDRO REYES, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff ALEJANDRO REYES individually, and on behalf of
all others similarly situated,

By: 

Thomas A. Zimmerman, Jr.

tom@attorneyzim.com

Amelia S. Newton

amy@attorneyzim.com

Sharon A. Harris

sharon@attorneyzim.com

Matthew C. De Re

matt@attorneyzim.com

Nickolas J. Hagman

nick@attorneyzim.com

Maebetty Kirby

maebetty@attorneyzim.com

ZIMMERMAN LAW OFFICES, P.C.

77 W. Washington Street, Suite 1220

Chicago, Illinois 60602

(312) 440-0020 telephone

(312) 440-4180 facsimile

Firm ID No.34418

www.attorneyzim.com

Counsel for Plaintiff and the Putative Class